

TITLE 205
CHAPTER 1

DEFINITIONS

001 DEFINITIONS. Words used in these regulations shall have the following meanings unless otherwise specified within the context of the regulation in which they appear.

001.01 ACT means the Developmental Disabilities Services Act. Neb. Rev. Stat. §§ 83-1201 to 83-1226.

001.02 ADA means Americans with Disabilities Act of 1990. 42 U.S.C. 12101 et. seq.

001.03 ADAPTIVE BEHAVIOR means the actions of a person that meet the standards of independence, maturity, learning and social responsibility expected of members of the same chronological age and/or cultural group(s) (e.g., self-care, economic self-sufficiency).

001.04 ADMINISTRATOR means the person hired by, reporting to, and authorized by the governing board to direct the day to day activities of the provider agency/organization. The administrator may be identified by the governing board as the Director, Executive Director, Chief Executive Officer, or Program Administrator.

001.05 AGENCY means an administrative structure and the persons within that structural entity defined by law, charter, license, contract or agreement that may be delivering services to persons with developmental disabilities.

001.06 ASSESSMENT means the process authorized by the person receiving services or the legal representative that identifies the preferences, skills, and needs of the person and the services, interventions, and supports that would facilitate the growth, development and independent functioning of the person.

001.07 AVERSIVE STIMULUS means a negative, unpleasant or punishing stimulus.

001.08 BEHAVIORAL EMERGENCY means a behavior exhibited by the person served that causes or has the potential to cause harm to the life, health, and/or safety of that person or of other persons; and/or causes or has the potential to cause damage to the physical environment.

001.09 BEHAVIOR MANAGEMENT PROGRAM means the interventions employed to systematically increase adaptive behaviors and to modify maladaptive or inappropriate behaviors.

001.010 BEHAVIOR MODIFYING DRUGS means those drugs that are prescribed and administered to produce a modification in behavior. These may include, but are not limited to, antipsychotics, antianxiety, sedative hypnotics, major and minor tranquilizers and antidepressants. Drugs that have the effect of behavior modification, but are prescribed for other reasons, as documented by a physician, are excluded.

001.11 CERTIFICATION means the approval status granted to providers by the Department for compliance with the standards in 205 NAC 3, 4 and 5 for eligibility to receive state-administered funds.

001.12 COMPETENCY-BASED means founded on the demonstrated capacity to perform an assigned function.

001.13 COMPLAINANT means any person filing a petition, complaint or appeal with the Department of any decision or action subject to the authority or jurisdiction of the Department pursuant to the Act.

001.14 COMPREHENSIVE ASSESSMENT means an assessment that identifies the physical, sensorimotor, cognitive, communicative, social/affective, adaptive/independent living, and leisure/personal skills of the person receiving services.

001.15 CONFLICT OF INTEREST means a conflict between the private interests and the official responsibilities of a person in a position of trust. Ethical problems connected therewith are covered by statutes in most jurisdictions and by federal statutes on the federal level.

001.16 CONTRACT AUTHORITY means the Governing Board when the contract is between a provider and a Governing Board, or the Department when the contract is between a Governing Board and/or provider and the Department.

001.17 DECISION MAKER means the individual(s) who issued or made the decision or action complained of or appealed.

001.18 DEPARTMENT means the Nebraska Department of Public Institutions (DPI).

001.19 DEVELOPMENTAL DISABILITY means:

- (1) Mental retardation; or
- (2) A severe, chronic disability other than mental retardation or mental illness which:
 - (a) Is attributable to a mental or physical impairment other than a mental or physical impairment caused solely by mental illness;
 - (b) Is manifested before the age of twenty-two years;
 - (c) Is likely to continue indefinitely; and
 - (d) Results in:
 - (i) In the case of a person under three years of age, at least one developmental delay; or
 - (ii) In the case of a person three years of age or older, a substantial limitation in three or more of the following areas of major life activity, as appropriate for the person's age:
 - (a) Self-care;
 - (b) Receptive and expressive language development and use;
 - (c) Learning;
 - (d) Mobility;
 - (e) Self-direction;
 - (f) Capacity for independent living; and
 - (g) Economic self-sufficiency.

001.20 DIRECTOR means the Director of the Department of Public Institutions.

001.21 DISCOVERY means requests for disclosures of information by interrogatory, deposition, requests to admit or deny written statements of facts, and motions to produce documents.

001.22 DIVISION means the Developmental Disabilities Division (DDD) of the Nebraska Department of Public Institutions.

001.23 DOCUMENTATION means the provision of written, dated, and signed evidence.

001.24 EMERGENCY BEHAVIORAL INTERVENTION PROCEDURE means a process used to prevent a person receiving services from causing harm to him/herself or others or causing damage to the physical environment when no approved behavioral intervention procedure is already in place.

001.25 FORMAL HABILITATION PROGRAM means an organized approach to habilitation which is based on individual skills and needs and results in written long-term goals and short-term objectives as identified in the individual program plan, taking into account individual preferences.

001.26 FULL ARRAY means the supports and services that will meet a person's objectively assessed needs.

001.27 GOVERNING BOARD means the entity responsible for providing oversight, governance and policy direction for the operation of a provider's programs.

001.28 HABILITATION means the process through which a person receiving services is assisted in acquisition and maintenance of life skills that increase independence, interdependence, productivity, and provide opportunities to participate in the community environment.

001.29 HEARING OFFICER means an individual appointed by the Director to preside at an administrative hearing.

001.30 INDIVIDUAL EDUCATION PROGRAM (IEP) means the written statement, generated by the school system, for a child with a verified disability, (see 92 NAC 51-007) which specifies the special education and related services necessary to assure that the child receive a free, appropriate public education.

001.31 **INDIVIDUAL AND FAMILY SUPPORT PLAN (IFSP)** means a written plan developed by the interdisciplinary team for a child with a developmental disability which describes the services to be provided, the frequency of those services, and the type of provider for the services needed to support the family and maintain the child's placement with the family and/or in the community. An IFSP is written for children whose services are funded by the "Home and Community Based Model Waiver Services for Children with Mental Retardation and Their Families."

001.32 **INDIVIDUAL PROGRAM PLAN (IPP)** means a written plan developed by the interdisciplinary team for a person with a developmental disability which describes the services, interventions and supports to be provided to meet the assessed needs of the person receiving supports and/or services, and takes into account individual preferences. The IPP may be developed in conjunction with the IEP or IFSP for children receiving special education or other community services.

001.33 **INTERDEPENDENCE** means mutually dependent.

001.34 **INTERDISCIPLINARY TEAM** means a group of individuals representing various disciplines that share their knowledge and expertise and assist the person receiving services in developing a comprehensive and coordinated individual program plan that addresses the preferences and needs of the person receiving services. The interdisciplinary team consists of the person receiving services, the legal representative, and/or the parent(s) (if the person receiving services is a minor), the DDD Service Coordinator, and other individuals whose participation is relevant to the person receiving services.

001.35 **INTERVENTION PROCEDURE** means a process used to decrease or eliminate those behaviors which interfere with the performance of desired behaviors or with the acquisition of new behaviors. Examples of intervention procedures include but are not limited to reinforcing alternative behaviors, differential reinforcement of other behaviors, extinction, response cost, and time-out.

001.36 **INTRUSIVE PROCEDURE** means any procedure or intervention that is imposed or enforced on a person receiving services that is seen as undesirable to the person and/or controls the person's choices or actions.

001.37 **LEAST RESTRICTIVE ALTERNATIVE** means the most appropriate alternative which meets the assessed needs of the person receiving services with a minimum amount of limitation, intrusion or disruption and which enables the person to exercise maximum possible personal choice in daily activities.

001.38 **LEGAL REPRESENTATIVE** means any person who has been vested by law with the power to act on behalf of the person receiving services in making decisions as required by these regulations. This term includes a guardian appointed by a court of competent jurisdiction; or a parent in the case of a minor; or a person acting under a valid Power of Attorney.

001.39 **LOCAL FIELD OFFICE (L.F.O.)** means the local DDD Service Coordination Office.

001.40 **LONG-TERM GOAL** means a desired result or condition that takes time to achieve, is specific and provides guidance in establishing short-term objectives directed toward its attainment.

001.41 **MALADAPTIVE BEHAVIOR** means actions that are aggressive, destructive, self-abusive, or a danger to self or others.

001.42 **MENTAL RETARDATION** means substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 22.

001.43 **NON-SPECIALIZED SUPPORTS AND/OR SERVICES** means services or assistance offered through public and private agencies and other sources not specifically provided only for persons with a developmental disability.

001.44 **PARTY** means the person(s) by or against whom an administrative procedure is or may be brought.

001.45 **PROGRAM** means the organizational set of resources and services administered by an agency/service provider directed toward the accomplishment of a defined set of goals designed to meet the individualized needs of persons receiving services.

001.46 **PROVIDER** means the individual, organization or agency certified by the Department of Public Institutions to provide contracted services to persons with developmental disabilities.

001.47 QUALITY-OF-LIFE means the level of an individual's satisfaction with his/her daily life, work, relationships, and living situation.

001.48 REGION means a geographical area specified in the Developmental Disabilities Services Act as a developmental disability region in the State of Nebraska.

001.49 RESPITE means a service which sustains the family or other non-paid primary caregiver of a person receiving services by providing temporary relief from the ongoing responsibilities of supporting and caring for the person.

001.50 RESPONDENT means the agency/agencies or entity/entities against whom the petition is directed.

001.51 RESTRAINT means any behavior modifying drug, physical intervention or mechanical device used to restrict the movement or control the behavior of a person receiving services or the movement or normal function of a portion of the person's body. Devices used to provide support for the achievement of functional body position or proper balance, and devices used for specific medical and surgical (as distinguished from behavioral) treatment are excluded.

001.52 RESTRICTIVE PROCEDURE means any procedure which restricts the movement of a person receiving services, restricts the ability of a person receiving services to obtain positive reinforcement, restricts the ability of a person receiving services to participate in programs, and/or restricts any rights of the individual. Examples of restrictive procedures include but are not limited to the removal of personal property, the use of time-out, the use of restraint, and the use of behavior modifying drugs.

001.53 RULES OF EVIDENCE means the rules of court procedure which govern the admissibility of evidence at trials and hearings.

001.54 SECLUSION means placement of a person alone in an area which is not under observation and from which exit is prevented.

001.55 SERVICE means a directly applied assessment, habilitative, and/or supportive intervention process for increasing and/or maintaining the capacity of the person receiving services for independent living, self-determination, productivity, interdependence and integration into the community. A service provided specifically for persons with developmental disabilities may be referred to as a specialized service.

001.56 SERVICE COORDINATION means the coordination of non-specialized and specialized services and supports that promote the independence, interdependence, productivity, and community integration of persons receiving services. In the Home and Community-Based Waiver, service coordination is referred to as case management.

001.57 SEXUAL HARASSMENT means any unwelcomed sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, when:

- (a) submission to such conduct is made either explicitly or implicitly as a term of an individual's employment or a condition to receipt of services by a recipient of the agency's services; or
- (b) submission to or rejection of such conduct by an individual is used as the basis for employment or agency decisions affecting an employee or a recipient of the agency's services; or
- (c) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or the receipt of services by a recipient of the agency's services, or of creating an intimidating, hostile or offensive environment.

001.58 SHORT-TERM OBJECTIVE means an expected result related to the attainment of a goal which is stated in person-centered, specific, measurable and observable terms, so that the skills achieved can be assessed.

001.59 SPECIALIZED SERVICES are the supports and/or services provided specifically for persons with a developmental disability which are delivered by a certified provider under contract with the Department of Public Institutions.

001.60 TERMINATION means when a person is no longer enrolled in a provider's services.

001.61 TIME-OUT means the removal of an individual from a situation wherein undesired behaviors are exhibited. The individual is isolated but under constant observation and is prevented from leaving the isolated area without staff approval.

001.62 TRANSITION means a coordinated set of activities designed within an outcome-oriented process which promotes movement from one stage to another. Transitional activities may include but are not limited to activities designed to enhance movement from: school to post-school activities (e.g., post-secondary education, vocational training, integrated employment, continuing and adult education, adult services and community participation); work to retirement activities (e.g., leisure skills training, exercise programs, sensory stimulation, social skills training, and generic senior services); and from one level of support to another (e.g., group home, natural family home, supervised apartment and independent living).

Source: Neb. Rev. Stat. §§ 83-1201 to 83-1227